

REMARKS

Claims 1-34, 39, 56, 77-94, 99, 112, 121, 124 and 128-192 are pending. Claims 77-94, 99 and 112 have been allowed. Claims 1-34, 39, 56, 124 and 128-160 were rejected under 35 U.S.C. § 112. Claims 1-34, 39, 56, 121, 124 and 128-192 were rejected under 35 U.S.C. § 101. Claims 1, 9, 10, 12, 15, 16, 22-34, 39, 56, 121, 124, 132, 135, 138, 141, 142, 148-160, 165-169, 171, 173, 174, 180, 181, 185 and 187-189 have been amended. Reconsideration and allowance of Claims 1-34, 39, 56, 77-94, 99, 112, 121, 124 and 128-192 is requested.

Rejection of Claims under 35 U.S.C. § 112

In the Office Action, Claims 124 and 128-160 were rejected under 35 U.S.C. § 112, first paragraph. The Office Action stated:

The "invention" for the purpose of the first paragraph analysis is defined by the claims. The description requirement is simply that the claimed subject matter must be described in the specification. The function of the description requirement is to ensure that the applicant had possession of the invention on the filing date of the application. The application need not describe the claim limitations exactly, but must be sufficiently clear for one of ordinary skill in the art to recognize that the applicant's invention encompasses the recited limitations. The description requirement is not met if the application does not expressly or inherently disclose the claimed invention.

Specification does not explicitly describe nor is sufficiently clear for one of ordinary skill in art to recognize the following steps as recited in independent claim 124:

"... a receiver ... and a transmitter ..."

Applicant does not cite anywhere in the present application specification indicating that "... a receiver ... and a transmitter ...". Thus it is unclear how the present specification can support the claimed limitations "... a receiver ... and a transmitter ..." in claim 124.

Therefore, claims 124 (independent claim) and 128-160 are unclear that the one ordinarily skilled in the art cannot recognize the encompassed claimed limitations.

Though Applicant's specification does not specifically use the terms "receiver" and "transmitter," the functions performed by the receiver and transmitter in Applicant's claims (e.g., receiving, transmitting, communicating, providing) are clearly described throughout Applicant's specification, and that those functions can be performed by apparatus denoted generally as a "receiver" and/or a "transmitter" would certainly be clear to one of ordinary skill in the art. The Office Action states that "[t]he description requirement is not met if the application does not expressly or inherently disclose the claimed invention" and that Applicant's specification does not provide such disclosure. However, as indicated above, in view of the description throughout Applicant's specification of the functions performed by the receiver and transmitter recited in Applicant's claims, Applicant contends that such receiver and transmitter are, at least, inherently disclosed therein and, consequently, the receiver and transmitter recited in Claims 124 and 128-160 meet the requirements of the first paragraph of 35 U.S.C. § 112.

In the Office Action, Claims 1-34, 39, 56, 124 and 128-160 were rejected under 35 U.S.C. § 112, second paragraph as being indefinite. The Office Action stated:

[I]t is not clear that applicant intended to claim apparatus/device or application/software instruction.

If applicant intended to claim apparatus/device, the apparatus/device cannot be just code/application/software instruction. Within the meaning of 101, a machine/device is "a concrete thing, consisting of parts or of certain devices and combination of devices. [citation omitted] Therefore, claims 1-34, 39, 56, 124 and 128-160 are incomplete or inaccurate as claimed as apparatus/device.

If Applicant intended to application/code/software instruction, the claims 1-34, 39, 56, 124 and 128-160 are just limited to a functional descriptive materials consisting of application per se, instead of being defined as including tangible embodiments (i.e., a computer-readable storage medium such as memory device, storage medium, etc.)

Regarding claims 1-34, 39, 56, 124 and 128-160, it is not clear that "means for receiving" and "means for communicating" and "means for ascertaining", etc. are hardware components or software components. In case if those "means for" are software components, it appears that claims 1-34, 39, 56, 124 and 128-160 are not "apparatus/device" because apparatus/device cannot be just software. Therefore, claims 1-34, 39, 56, 124 and 128-160 are incomplete or inaccurate as apparatus/device.

Applicant has amended Claims 1, 9, 10, 12, 15, 16, 22-34, 39, 56, 124, 132, 135, 138, 141, 142 and 148-160 to make clearer that Claims 1-34, 39, 56, 124 and 128-160 recite apparatus: those claims now include recitations that the apparatus includes a core server and can further include a node server and/or client. Apparatus/hardware/devices that can be used to implement a core server, node server and client in accordance with the invention are described at various places in Applicant's specification. Apparatus/hardware/devices that can be used to implement a core server in accordance with the invention are described at, for example, page 13, lines 8-31; page 14, lines 8-

18; and page 14, line 29 to page 15, line 9 of Applicant's specification. Apparatus/hardware/devices that can be used to implement a node server in accordance with the invention are described at, for example, page 21, lines 13-32 of Applicant's specification. Apparatus/hardware/devices that can be used to implement a client in accordance with the invention are described at, for example, page 26, lines 3-19 of Applicant's specification.

In view of the foregoing, it is requested that the rejections of Claims 1-34, 39, 56, 124 and 128-160 under 35 U.S.C. § 112 be withdrawn.

Rejection of Claims under 35 U.S.C. § 101

In the Office Action, Claims 1-34, 39, 56, 124 and 128-160 were rejected under 35 U.S.C. § 101. The Office Action stated:

The claims are system claims (e.g., claims 22-34 and 148-160 indicate that claims 1-34, 39, 56, 124 and 128-160 are system claims). However, it is not clear that "means for receiving" and "means for communicating" and "means for ascertaining", etc. are hardware components or software components, given that no explicit hardware embodiments of the "means for" can be found in the specifications. Therefore, the claims are directed to non-statutory subject matter. Correction is required.

As discussed above, Applicant has amended Claims 1, 9, 10, 12, 15, 16, 22-34, 39, 56, 124, 132, 135, 138, 141, 142 and 148-160 to make clearer that Claims 1-34, 39, 56, 124 and 128-160 recite apparatus (that includes a core server and can further include a node server and/or client) and therefore recite statutory subject matter.

In the Office Action, Claims 121 and 161-192 were rejected under 35 U.S.C. § 101. The Office Action stated:

[T]hese appear to be directed toward a method or process for effecting the provision of content cover a network. Based on Supreme Court precedent, and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. [citations omitted]

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example, by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. In the instant application, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not required to be tied to another statutory class and can be performed without the use of a particular apparatus. Furthermore, the method steps fail to unambiguously require transformation of underlying subject matter to a different state or thing. The mere steps of identifying, providing, receiving, communicating and ascertaining information is not a transformation and is not statutory subject matter.

Thus, claims 121 and 161-192 are non-statutory since they are not requisitely tied to another statutory class and they do not requisitely transform underlying subject matter to a different state or thing.

Claims 121, 165-169, 171, 173, 174, 180, 181, 185 and 187-189 have been amended to recite that the steps of the methods of Claims 121 and 161-192 are tied to a core server, node server and/or client, as appropriate. Thus, the steps of the methods of Claims 121 and 161-192 are tied to particular machine(s) and therefore those claims recite statutory subject matter.

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In view of the foregoing, it is requested that the rejection of Claims 1-34, 39, 56, 121, 124 and 128-192 were under 35 U.S.C. § 112 be withdrawn.

CONCLUSION

Claims 1-34, 39, 56, 77-94, 99, 112, 121, 124 and 128-192 were pending. Claims 77-94, 99 and 112 have been allowed. Claims 1-34, 39, 56, 121, 124 and 128-192 were rejected. Claims 1, 9, 10, 12, 15, 16, 22-34, 39, 56, 121, 124, 132, 135, 138, 141, 142, 148-160, 165-169, 171, 173, 174, 180, 181, 185 and 187-189 have been amended. In view of the foregoing, it is requested that Claims 1-34, 39, 56, 77-94, 99, 112, 121, 124 and 128 192 be allowed. If the Examiner wants to discuss any aspect of this application, the Examiner is invited to telephone Applicants' undersigned attorney at (408) 945-9912.

I hereby certify that this correspondence is being transmitted via facsimile to the U.S. Patent and Trademark Office, facsimile number (571) 273-8300, on June 17, 2009.

6-17-09 David R. Graham  
Date Signature

Respectfully submitted,

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